

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.04.2015

CORAM:

THE HON'BLE MS.JUSTICE K.B.K.VASUKI

CRP (NPD) No.1203 of 2006

C.Vasantha

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Petitioner

.Vs.

1. Lakshmi Ammal
2.V.S.Kuppammal
3.N.Selvanayagam
4.N.Kathirvelu
5.N.Pazhanivelu
6.N.Dhandapani

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Respondents

PRAYER: Petition filed under Section 115 of the Code of Civil Procedure praying to set aside the order and decree dated 08/04/2005 made in I.A.No.164 of 2004 in R.C.A.No.4 of 2002 on the file of the Court of the Subordinate Judge of Panruti, reversing the order and decree dated 08.02.2002 made in I.A.No.16 of 2001 in R.C.O.P.No.9 of 1997 on the file of the Court of Rent Controller (District Munsif), Panruti.

For Petitioner : Mr.T.Dhanasekaran
For Respondents : Mr.Sunilkumar (R1, R4 to R6)
R2 and R3 died on 22.03.2010

ORDER

Heard both sides.

2. This Civil Revision Petition is filed by the landlord against the order passed in I.A.No.164 of 2004 in R.C.A.No.4 of 2002.

3. The petitioner herein filed a petition in RCOP No.9 of 1997 under Section 10(2)(1) and 14(1)(b) of Tamil Nadu Buildings (Lease and Rent Control) Act) (hereinafter shortly referred to as Act) seeking eviction against the original tenant by name Natesa Achari on the ground of wilful default and for the purpose of demolition and reconstruction. The respondent/tenant after receiving notice, failed to appear before the learned Rent Controller as a result, the tenant was set exparte and exparte order of eviction was passed on 11.06.1999, against which, the tenant filed an application in I.A.No.6 of 2000 for setting aside the exparte order of eviction.

4. Pending application, the tenant died on 03.06.2001 and his legal

heirs filed I.A.No.16 of 2001 in RCOP No.9 of 1997 on 31.07.2001 to implead them as parties to the proceedings in I.A.No.6 of 2000 and notice was ordered to the landlord. On receipt of the notice, the landlord filed counter stating that as per Rule 25 of the Tamil Nadu Buildings (Lease and Rent Control) Rules 1974, the application to bring the Legal Representatives on record shall be filed within one month from the date of death of the person concerned, whereas in the case on hand, the tenant died on 03.06.2001 and the petition was filed on 31.07.2001 i.e. beyond one month as such, the same is not maintainable in law. In spite of the same, the legal heirs of the original tenant did not choose to file any application to condone the delay in filing the application to bring on record the legal heirs of the deceased tenant.

5. The learned Rent Controller by an order dated 08.02.2002 having found that the petition was filed beyond 30 days without any petition to condone the delay, dismissed the petition. Aggrieved against the same, the proposed parties, who were the petitioners in I.A.No.16 of 2001, come forward with R.C.A.No.4 of 2002. Pending RCA, they also come forward with I.A.No.164 of 2004 to condone the delay of 31 days in presenting the legal heir petition in I.A.No.16 of 2001 before the learned rent controller. The Lower Appellate Court allowed both I.A.No.164 of 2004 in R.C.A.NO.4 of

2002 and R.C.A.No.4 of 2002 on the ground that the petition to implead legal heirs was rejected for want of condone delay petition and the proposed parties could not file the petition to condone the delay in filing the legal heirs petition because the same was numbered by the trial Court without returning it and the same was sufficient reason for the omission to file any condone delay petition before the trial Court and the petitioners thus explained the reason for the delay of 31 days and the delay was hence liable to be condoned. Aggrieved against the same, the landlord is now before this Court by way of present Civil Revision Petition.

6. Heard the rival submissions made on both sides.

7. At the outset, this Court is not inclined to accept the findings rendered by the Lower Appellate Court in allowing I.A.No.164 of 2004, which is one for condoning the delay of 31 days in filing I.A.No.16 of 2001 and consequently allowing RCA No.4 of 2002. The Lower Appellate Court while doing so, failed to consider that such course in allowing the petition to condone delay at the appellate stage, is unknown to the procedure laid down under the Act. The Lower Appellate court also failed to see the objection raised by the landlord in his counter regarding the maintainability of the L.R petition, which was filed beyond 30 days time as specified under

Rule 25 of the Tamil Nadu Buildings (Lease and Rent Control) Rules, 1974 and the Legal Representatives ought to have come forward with such application to condone the delay in filing L.R petition before the Trial Court. The Legal Heirs having suffered an order of dismissal in the hands of the Rent Controller and having preferred an appeal against that order, the application filed to condone the delay is legally not maintainable at the appellate stage and the question of considering the sufficiency or otherwise of the delay does not at all arise at the appellate stage. That being the legal and factual position, the impugned order passed by the Appellate Court suffers from serious illegality and is vitiated and is hence set aside.

8. In the result, this Civil Revision Petition is allowed by setting aside the impugned order passed by the Lower Appellate Court.

21.04.2015

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K.B.K.VASUKI, J

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To

- 1.The Rent Controller (District Munsif), Panruti.
- 2.The Sub Judge, Panruti.

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